

LAW OFFICES
HALEY BADER & POTTS P.L.C.
4350 NORTH FAIRFAX DR., SUITE 900
ARLINGTON, VIRGINIA 22203-1633
TELEPHONE (703) 841-0606
FAX (703) 841-2345

POST OFFICE BOX 19006
WASHINGTON, D.C. 20036-9006
TELEPHONE
(202) 331-0606

RICHARD M. RIEHL

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FEDERAL COMMUNICATIONS COMMISSION
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March 31, 1995

OUR FILE NO.
1137-103-63

William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

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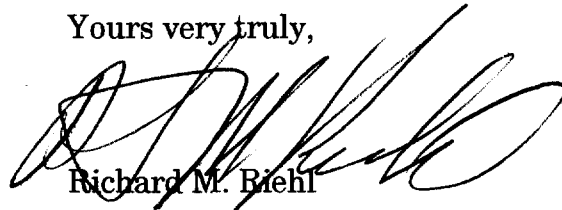
RE: MM Docket No. 95-7, Amendment of Section 73.202(b),
Coleman, Tuscola and Sebewaing, MI

Dear Mr. Caton:

On behalf of Faircom Flint Inc., proponent in the above-referenced proceedings, please find enclosed an original and four copies of its Reply Comments in the above-referenced proceeding.

Should you have any questions concerning this matter please contact this office directly.

Yours very truly,



Richard M. Riehl

Enclosures

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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MAR 31 1995

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 95-7
Table of Allotments)	RM-8561
FM Broadcast Stations)	
(Coleman, Sebewaing and)	
Tuscola, Michigan))	
)	
To: Chief, Allocations Branch)	DOCKET FILE COPY ORIGINAL

REPLY TO OPPOSITION

Faircom Flint, Inc. ("Faircom"), licensee of Station WWBN (FM) ("WWBN"), Channel 269A, Tuscola, Michigan, by its attorneys, hereby submits its Reply to the Opposition, filed on or about March 15, 1995, by Come Together Ministries, Inc. ("Come Together"), licensee of Station WPRJ (FM) ("WPRJ"), Channel 268A, Coleman Michigan, regarding the above-captioned Rule Making proceeding.¹ As will be shown below, the Notice of Proposed Rule Making ("NPRM")², proposes to amend the FM Table of Allotments to allow WWBN and WPRJ to increase, by way of a channel swap, both stations' power from 3 kW to 6 kW.³

¹ *Thumb Broadcasting, Inc.* filed a counterproposal asking that a different channel be substituted in lieu of Channel 281A at Sebewaing, Michigan. Since this counterproposal does not impact the proposed channel exchange at Tuscola and Coleman, Faircom has no objection.

² DA 95-46 released January 23, 1995.

³ Specifically, Faircom proposes that the FM Table of Allotments be amended to allot channel no. 269A to Coleman, Michigan, and channel no. 268A to Tuscola, Michigan. Currently, channel 268A is allocated to Coleman, and channel 269A is allocated to Tuscola.

In its Opposition Come Together argues that the license modifications proposed in the NPRM should not be implemented, even though both stations could achieve full Class A facilities, because: 1) from a hypothetical location WWBN could increase to full power without the channel change; 2) Come Together believes that sometime in the future, *with rule waivers*, it might be able to increase WPRJ's power to 6 kW on its present channel and; 3) Come Together should not be so inconvenienced, particularly where, as here, it finds WWBN's programming to be repugnant.⁴ Petitioner's factual demonstration in support of its Opposition does nothing more than confirm the conclusion in the NPRM that the proposed change in channels for WWBN and WPRJ would serve the public interest.

Applicable Standard

Section 316 of the Act (47 U.S.C. § 316) and Section 1.87 of the Rules require anyone opposing the proposed modification of a station license to demonstrate that a substantial and material question of fact exists as to whether the proposed modification would serve the public interest. In implementing this statutory mandate the Commission, in *License Modification Pursuant to Section 316 of the Act*, 63 RR2d 58, 61 (1987), in an effort to "alleviate some of the concerns which *might otherwise lead to unnecessary protests*. (emphasis added) concluded that the existing requirements for reimbursement and the lead time before actual implementation was sufficient to offset any temporary audience loss or other inconvenience. The Commission further advised that "[g]enerally these concerns have not out

⁴ Based on the citation of *Sandy Springs, Georgia*, 6 FCC Rcd 6580 (M.M.B. 1991), WPRJ also appears to be contend that this proceeding involves some sort of community reallocation. No community change is involved in this case and the reference point continues to permit a full city grade signal over all of Tuscola.

weighed the public interest benefits of the new channel.” *Id.* Clearly then, under existing law, some fundamental public interest detriment would have to exist before the Commission could conclude that changes in the Table of Allotments proposed in the NPRM, permitting two FM stations to achieve full Class A status, should not be implemented. Yet, Come Together has offered only the assertion of inconvenience and the claim of possible future 6 kW implementation on the stations’ presently assigned channels as reason for not implementing these proposed changes. Not only are the public interest benefits compelling and effectively conceded by Come Together, but its arguments concerning the detriments of the changes contained in the NPRM are either invalid or, in fact, support the proposed allocation.

**Public Interest Benefits
are Apparent and Uncontroverted**

Maximizing Number of 6 kW Stations

The proposal contained in the NPRM will serve the public interest by permitting both WWBN and WPRJ to increase their power to 6 kW.⁵ NPRM para. 2. The Commission has stated that its policy goals include maximizing the number of 6 kW Class A stations, and that the public interest demands consideration of proposals which will help bring about this goal. *In Re East Los Angeles, Long Beach and Frazier Park, California*, Report and Order (DA 95-440) released March 17, 1995, n.21. Accordingly, the proposal contained in the NPRM, which will result in two Class A stations increasing their power to 6 kW, furthers this Commission policy.

⁵ WPRJ and WWBN are currently restricted to 3 kW.

Increased Population Coverage

As noted in the NPRM, Faircom's proposal will provide expanded service to Tuscola and Coleman. *Id.* para. 4. Moreover, Faircom's proposal will substantially increase the entire population served by WWBN. As reflected in the attached engineering statement of Hatfield & Dawson, the population served within WWBN's 60 dbu service contour will increase from 106,605 to 365, 429.⁶ Hence, Faircom's proposal will result in a more than threefold increase in the population served by WWBN. Moreover, while not shown by Come Together, a significant increase in the population served by WPRJ can also be expected.

Come Together correctly points out that Section 307(b) of the Communications Act should be the conclusive criterion to be considered for any proposed alteration to the FM Table of Allotments. Opposition at 4. Indeed, the large increase in the number of people served under the NPRM's proposed channel exchange furthers the objectives of Section 307(b). Regarding Section 307(b) implementation, the Commission has ruled that increased population coverage is a paramount consideration: "The ultimate touchstone for the FCC is...the distribution of service, rather than of licenses or of stations; the constituency to be served is people, not municipalities." *In re Faye and Richard Tuck, Inc.*, 3 FCC Rcd. 5374 (1988), para. 2 (citing *National Association of Broadcasters v. FCC*, 740 F.2d 1190, 1198 (D.C. Cir. 1984)).

⁶ Come Together's own engineering confirms the substantial increase in population that would be served by WWBN. See Engineering Statement, Table 1.0, Attachment to Come Together's Opposition.

Come Together's Arguments are Misleading Invalid and Process Abusing

WWBN Operation on Channel 269 with 6 kW

Come Together argues that no change of channels is necessary because WWBN could operate from a different location at 6 kW on its present channel. (Opposition p 2-3).⁷ The hypothetical location posited by Come Together is 13.2 km north-northwest of Tuscola. Come Together's site proposal is specious. The attached engineering statement establishes that WWBN operating at 6 kW from Come Together's hypothetical site would in fact result in a nearly 20% decrease in the total population within WWBN's existing service contour.⁸

WPRJ Cannot Operate with 6 kW on Channel 268

Come Together speculates that maintaining the *status quo* will also allow WPRJ to upgrade to 6 kW on its current channel sometime in the future. However, Come Together acknowledges that two short-spacing obstacles stand in the way of a potential upgrade to WPRJ on its present channel (Opposition p. 2-3). In this regard, the attached Hatfield & Dawson report confirms that Come Together's plan would not allow WPRJ to operate with full 6 kW facilities at its present site without waiver of the rules, even if WCUZ implements its outstanding CP or its pending application, because the impermissible short-spacing to WBTZ would remain unresolved. It is thus clear that the allocation plan contained in the NPRM is the only one which

⁷ Come Together also appears to argue that the proposed reference point was selected to maximize service to the Flint and Saginaw areas. While there is clearly nothing wrong in attempting to maximize service, the Hatfield & Dawson report makes clear that clearance with the Canadian allocation at Sarnia, Ontario was the controlling factor in selecting the reference point.

⁸ WWBN at 3 kW presently provides 60 dbu service to 106,605 persons. Operating with 6 kW from the Come Together site would permit 60 dbu service to only 85,807 persons. See Engineering Attachment.

would allow the upgrade of both WPRJ and WWBN in full compliance with all of the Commission's rules.

Come Together's Claim of Disruption is a Façade

Since, Faircom has committed to reimburse Come Together, the question of service disruption is not a valid basis for objecting to a mandated channel change. In this case, however, Come Together seeks to hide behind a claim of disruption when, in fact, its sole basis for objecting to this channel change is that it finds WWBN's *standard* AOR programming format personally objectionable.⁹

In fact, as reflected in Come Together's own pleading (Opposition, p.5), Come Together did not even regard the proposed channel exchange as disruptive *until* Faircom modified WWBN's programming. Significantly, Come Together makes no claim that the public interest would be adversely affected by WWBN's new format. Rather, Come Together appears motivated solely by a desire to influence the programming choice of another licensee. Indeed, Come Together's desire is so overriding that it overtly threatens to deal in bad faith with Faircom regarding the reimbursement of its costs if the Commission adopts the NPRM's proposal.¹⁰ *Id.*

In sum, not only are Come Together's technical arguments invalid, but its Opposition to the proposed channel change is motivated solely by its dislike

⁹ Come Together characterizes WWBN's new format as "risque rock" (Opposition, p.4).

¹⁰ Come Together's exact language is "we expect that if the Commission forces us to change channels, our dealings with Faircom regarding the required reimbursement of our costs will be very difficult and probably will ultimately require the Commission's direct involvement." Opposition at 5. Come Together quite obviously is threatening to expend the Commission's resources and delay service to the public simply because it does not approve of Faircom's programming choice. Hence, Come Together apparently feels that serving the public interest is less important than implementing its own views as to what constitutes an acceptable broadcast format.

for the programming on WWBN. The Commission cannot condone such clearly impermissible conduct.

Conclusion

The channel exchange proposed in the NPRM will serve the public interest by greatly enlarging WWBN's population coverage and by permitting two Class A Stations to increase their power to 6 kW, in furtherance of stated FCC policy. Faircom hereby restates its intention to apply for and promptly complete the necessary modifications on channel 268A if it is allotted. Conversely, Come Together's Opposition raises no material questions of fact that demonstrate or in fact indicate that the channel exchange proposal will not serve the public interest when scrutinized, Come Together's Opposition is actually process abusing.

For the foregoing reasons, Come Together's Opposition must be summarily rejected, and the FM Table of Allotments amended in accordance with the plan set forth in the NPRM.

Respectfully submitted,

FAIRCOM FLINT, INC.

By: 

Lee W. Shubert
Richard M. Riehl
Ronald E. Quirk, Jr.

Its Attorneys

Haley Bader & Potts P.L.C.
4350 N. Fairfax Drive, Suite 900
Arlington, VA 22203-1633
(703) 841-0606

March 31, 1995

JAMES B. HATFIELD, PE
BENJAMIN F. DAWSON III, PE
THOMAS M. ECKELS, PE

PAUL W. LEONARD, PE
L.S. CHRISTIANE ENSLOW
STEPHEN S. LOCKWOOD, PE

HATFIELD & DAWSON
CONSULTING ELECTRICAL ENGINEERS
4226 SIXTH AVE. N.W.
SEATTLE, WASHINGTON 98107

TELEPHONE
(206) 783-9151
FACSIMILE
(206) 789-9834
MAURY L. HATFIELD, PE
CONSULTANT
Box 1326
ALICE SPRINGS, NT 5950
AUSTRALIA

ENGINEERING STATEMENT
REPLY COMMENTS TO
NOTICE OF PROPOSED RULEMAKING

MM DOCKET 95-7, RM-8561

FAIRCOM FLINT, INC.

MARCH 1995

ENGINEERING STATEMENT

This Engineering Statement has been prepared on behalf of Faircom Flint, Inc. ("Faircom"), licensee of FM Broadcast station WWBN, Tuscola, MI. This statement supports Reply Comments to an Opposition by Come Together Ministries, Inc. ("CTM") to the Commission's Notice of Proposed Rulemaking in MM Docket 95-7. In the NPRM, the Commission, upon request by Faircom, proposed to modify the FM Table of Allotments, §73.202 to change the channel allotments at Tuscola from channel 269A to channel 268A, and at Coleman, MI from channel 268A to channel 269A.

The channel allotment changes proposed by Faircom will allow operation with full 6 kilowatts Class A facilities by Faircom's station WWBN, and by CTM's station WPRJ. Both stations are now barred from full 6 kw operation by virtue of short-spacings. With the proposed channel changes CTM's WPRJ can operate with full 6 kw facilities from its presently authorized site. Faircom's WWBN on its new channel will be able to operate with full power facilities by virtue of a transmitter site change to a location, described in the original Faircom PRM, located approximately 10 km SW of Tuscola.*

In its Opposition, CTM postulates that WWBN could operate with full class A 6 kw facilities at a site located approximately 16 km NE of Tuscola, and from this site would meet the requirements of the U.S.A.-Canada "Working Arrangement" regarding FM channel allotments.

*The reference point for Faircom's proposal was selected to provide for adequate spacing to the Canadian allotment at Sarnia, Ontario, per the provisions of §5.2.2 of the U.S./Canada Working Arrangement

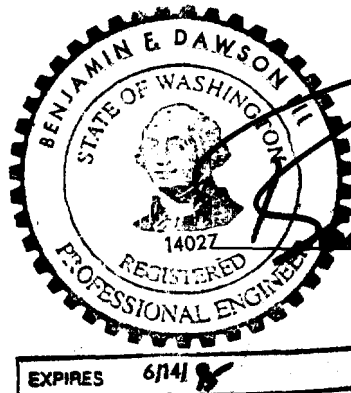
Hatfield & Dawson Consulting Engineers

The populations which would be provided with 60 dBu (protected) service from the Faircom proposal and from CTM's scenario have been calculated. They are:

Facility	60 dBu population
Licensed 3 kW WWBN	106,605
WWBN Proposed 6 kW	365,429
CTM Postulate 6 kW	85,807

Thus the scenario postulated by CTM, despite a 100% power increase, would result in a decrease in the total population within WWBN's 60 dBu contour of nearly 20%. Further, the CTM proposal would not allow WPRJ to operate at full 6 kW facilities at its present site without waiver of the rules, even if WCUZ implements its outstanding CP or its pending application, because the impermissible short-spacing to WBTZ would remain unresolved.

March 30, 1995



Benj. F. Dawson III, P.E.

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley Bader & Potts P.L.C., hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid to the following:

Gary M. Bugh
President
Come Together Ministries, Inc.
P.O. Box 236
Coleman, MI 48613

Thumb Broadcasting, Inc.
c/o James R. Bayes, Esquire
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006


Dawn A. Smith

March 31, 1995